MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2016/2017

ULS1612 – LEGAL SKILLS

(All Sections / Groups)

30 MAY 2017
Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 4 Questions only.

3. Attempt **ALL** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall a CLEAN and ORIGINAL copy of the Contracts Act 1950.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

(a) By using the five questioning techniques (yes/no question, open question, semi-open question, closed question and leading question), show examples of **question(s) and answer(s)** pertaining to a client interview session on a claim for breach of contract. Identify clearly which question is adopting which particular technique.

(15 marks)

(b) State and explain two (2) examples each the "Do's" and "Don'ts" in a professional client interview.

(10 marks)

(Total: 25 marks)

QUESTION 2

(a) Prepare a short note on the following type of legal research:

(i) Doctrinal research; and

(ii) Comparative legal research.

(5 marks x 2 = 10 marks)

(b) In January 2016, Cincai bought online an air ticket from AsiaTiger Airline Services to fly to Rio de Janeiro, Brazil to watch the 2016 Summer Olympics' Opening and Closing ceremonies beginning from early August. The air ticket was priced at RM5,000/- which Cincai paid through his credit card. In late April 2016, reliable source from FBI indicated that terrorists would attack all the stadiums involved in the Olympic Games season. Thus, this event had to be postponed to a date to be fixed mainly on this security issue. Further, no international flight is allowed to land in all the Brazil's international airports, including the aircrafts of AsiaTiger Airline Services from May 2016 until further notice. Cincai was upset.

Advise Cincai by applying the "IRAC" problem-solving technique.

(15 marks)

(Total: 25 marks)

Continued...

QUESTION 3

Magee placed an advertisement in Swort newspaper on 1 May 2017. The advertisement read as follows:

> "Apartment for sale. Price RM600,000/- negotiable. Call 010-1234567."

Rainee and Gary were interested to buy the apartment. Rainee rang Magee on 2 May 2017 at 2 pm and offered to buy the house for RM550,000/-. Magee told Rainee that she was willing to negotiate further and invited Rainee to meet her at KopiTiam Coffee House at 6 pm on the same day.

However, at 3 pm on the same day also, Gary rang Magee and stated that he was willing to pay RM580,000 for the apartment. Magee was happy with the price. Magee agreed to sell the apartment to Gary. Magee and Gary met at 5 pm on the same day and both of them signed a document which read as follows:

> "I, Magee, promise and agree to sell my apartment No 8-8-8, Supreme Court Residence, Jalan Merdeka, Melaka to Gary at the price of RM580,000/-.
>
> I, Gary promise to pay RM580,000 before or on 15.8.2017, to Magee as the purchase price of the apartment subject to a formal contract to be prepared by the solicitors."

When Rainee heard that Magee had agreed to sell the apartment to Gary, she was angry and wishes to sue Magee. Rainee was of the view that she was first in time to enter into the contract with Magee.

Prepare a written opinion to advise Rainee on her legal position.

(Total: 25 marks)

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QUESTION 4

Pertama Cabaret Nite Club Sdn. Bhd. v Roman Tam [1981] 1 MLJ 149 FC

SUFFIAN LP
(delivering the judgment of the Court): We allowed this appeal and now give our reasons.

The plaintiffs run a night club in Kuala Lumpur, the Pertama Cabaret Nite Club. According to their affidavit, on September 30, 1980, the well-known singer from Hongkong known as Roman Tam, defendant, through his agent in Malaysia, signed a contract agreeing to appear and sing at the plaintiffs' night club for nine days from November 28, 1980 and ending on December 6, 1980. According to copy of the agreement exhibited, the plaintiffs agreed to pay the defendant US$2,400 a day, plus expenses and Government tax.

The plaintiffs made all the necessary arrangements to enable the defendant to come and sing in the plaintiffs' night club, including the procurement of clearance by the Ministry of Youth, Culture and Sports, all immigration papers, a professional visa and the supply of air tickets.

Subsequently the plaintiffs' entertainment manager Mr. K.S. Wong heard from the defendant's agent that the defendant might not appear at the plaintiffs' night club unless offered higher remuneration. So Mr. Wong telephoned the defendant in Kowloon, Hongkong, on November 26 to tell him that all arrangements had been finalized and his air tickets, visa, etc. were ready.On November 28 at about 7.30 p.m. Mr. Wong went to Subang airport to meet the defendant, but he was nowhere to be found.

It later transpired that the defendant had declined to honour his contract to sing at the plaintiffs' night club and was, we were told from the Bar, singing at another night club in Kuala Lumpur, the Shangri-la.

Now, by clause 15 of the contract it was provided that misconduct by the defendant or breach of any of the terms of the agreement shall entitle the plaintiffs to terminate the contract; and that in the event of such termination the defendant shall not be entitled to perform in Kuala Lumpur during the period fixed in the contract or three months thereafter; and there are provisions for compensation to be paid by the defendant to the plaintiffs.

On December 5, the plaintiffs issued a writ against the defendant claiming an injunction and damages, and on the same day the plaintiffs took out a summons in chambers applying *ex parte*, for an interim injunction to restrain the defendant from appearing "at any opera house, theatre, concert hall or other public or private entertainment in Kuala Lumpur" until the hearing of the summons.

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Events moved fast, for on December 8 the summons came up in chambers before the learned judge, who on the same day refused to grant the application, which refusal he confirmed in open court two days later.

In a brief oral judgment he gave his reason for refusing the application. He said that the main ground upon which the application was made was that irreparable harm and damage had been suffered by the plaintiffs through the loss of their reputation as a reputable night club, but that he was not satisfied that damages would not be an adequate remedy, if indeed the defendant had committed a breach of contract.

The plaintiffs appealed from the decision of the learned judge. On December 11 when the matter came up before us, we allowed the appeal, set aside the learned judge's order, and, on the plaintiffs undertaking to pay damages should the case go against them, ordered the interim injunction to issue, restraining the defendant for a period of three months from date of breach of contract on November 28, 1980, plus nine days; but at the same time we gave the defendant liberty to apply within 14 days of the service on him of the interim injunction to have the interim injunction set aside; costs here and below to be costs in the cause.

It is to be emphasized that we were not at this stage concerned with the merits of the dispute between the plaintiffs and defendant; all we were concerned with was the *ex parte* application by the plaintiffs that an interim injunction should issue to restrain the defendant from singing or performing anywhere in Kuala Lumpur.

It is true that generally speaking an injunction will be refused where money damages will be adequate, and that usually damages only will be given instead of an injunction where, as stated by *Pollock and Mulla* on the Indian Contract and Specific Relief Acts, ninth edition, page 958,

"(i) injury to plaintiff's right is small; (ii) is one capable of being estimated in money; (iii) is one which is capable of being compensated by a small money payment; (iv) and the case is one in which it would be oppressive to the defendant to grant an injunction."

But here the defendant is not a resident of this country, he has signed a contract to sing for the plaintiffs on certain dates; as a professional singer he visits this country but briefly, probably flitting in and out; and once he has departed it is likely that he will not return for the pleasure of fighting a lawsuit. So it is unrealistic to suppose that the plaintiffs will be sufficiently compensated by money damages alone, for the truth is that they might not even get one cent. Failure by the courts to issue an interim injunction will create a bad precedent for other international singers, who will be able to contract to sing with one night club here and then blatantly flout it by singing at another instead.

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We might have been reluctant to restrain the defendant if he had been a resident of and with assets in this country — for then it would have been realistic to suppose that money damages might be enough to sooth the plaintiffs' injured feeling.

In *Hampstead and Suburban Properties Ltd v Diomedous* [1968] 3 All ER 545, Megarry J., dealing with an application for an interim injunction before trial, observed at page 550:

"Where there is a plain and uncontested breach of a clear convenant not to do a particular thing, and the convenantor promptly begins to do what he has promised not to do, then in the absence of special circumstances it seems to me that the sooner he is compelled to keep his promise the better. In such a case I do not think that the enforceability of the defendant's obligation falls into two stages, so that between the issue of the writ and the trial the defendant will be enjoined only if that is dictated by the balance of convenience and so on ... I see no reason for allowing a convenantor who stands in a clear breach of an express prohibition to have a holiday from the enforcement of his obligation until the trial. It may be that there is no authority on this point; certainly none has been cited. If so, it is high time that there was such authority; and now there is."

Finally, it is to be observed that the defendant's undertaking to sing is an affirmative agreement which in the ordinary way the court will not compel him to perform, the undertaking being dependent on his personal qualification and volition; but side by side with this affirmative undertaking the defendant has also given a negative undertaking not to sing anywhere else in Kuala Lumpur for a certain period: and under section 55 illustration (c) of the Specific Relief Act, Act 137, the circumstance that the court is unable to compel specific performance of the affirmative agreement does not preclude the court from granting an injunction to compel performance of the negative undertaking, if the plaintiff has not failed to perform the contract so far as it is binding on him. In our view this case falls squarely within this section and within the cases of *Lumley v Wagne* (1852) 1 De GM & G 604; 42 ER 687; 91 RR 193 and *The Broome (Selangor) Rubber Plantations v RH Whitley* [1919] 1 FMSLR 365, cited to us.

To remove any doubt, we state that should this matter come up again before the learned judge on application by the defendant, the learned judge will be free to set aside the interim injunction which we ordered be issued, and he will no doubt be advised by counsel as to the principles which he should observe in exercise of his discretion.

Appeal allowed.

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Based on the above grounds of decision, prepare a case note. Your case note shall contain the following:

(a)	Material facts of the case;	(10 marks)
(b)	Issue(s) or question(s) arising;	(3 marks)
(c)	Decision of the court;	(2 marks)
(d)	Reason(s) for the decision;	(5 marks)
(e)	Principle of law or *ratio decidendi* of the case	(5 marks)

(Total: 25 marks)

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